

BTH/KIM

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT – NORTHERN DISTRICT

HILLSBOROUGH, SS.

DECEMBER TERM, 2008

THE STATE OF NEW HAMPSHIRE

V.

DOMINIC ALI

DEC 02 2008

08-0858; 08-0859; 08-0862; 08-0864

DEFENDANT'S MEMORANDUM ON THE ISSUE OF SENTENCING

NOW COMES Dominic Ali, by and through counsel, and submits the following memorandum on the issue of sentencing.

Statement of case:

1. Dominic Ali was charged in the Hillsborough County Superior Court with two indictments of Second Degree Assault, one indictment and one information of simple assault, two informations of false imprisonment and two informations of obstructing the report of a crime. After a jury trial in September of 2008, one simple assault charge, one obstructing the report of a crime charge and one false imprisonment charge were dismissed. He was found not guilty of the simple assault indictment. He was found guilty of the two second degree assault indictments (08-0858 and 08-0859), one obstructing the report of a crime information (08-0864) and one false imprisonment information (08-0862).

General Background:

2. Dominic Ali was born in Khartoum, Sudan, [REDACTED]. He lived in Sudan with his extended family until he was 16 years old. At that age, he fled to Egypt

with his mother and sisters due to the civil war in Sudan. He lived in Egypt for approximately 1 year, and then he and his mother and sister applied for refugee status through the United Nations and were re-settled in the United States. He arrived in New York at John F. Kennedy Airport in 2000 and was immediately relocated to Manchester, New Hampshire with his mother and sister. He has lived in Manchester since 2000. He lived for 6 years with his mother and sister until they moved to Portland, Maine.

Education:

3. Upon his arrival in the United States and in Manchester, Dominic attended Central High School. In the 10th grade he dropped out and began working. After leaving Central High School however, he continued his education by attending the Youth Empowerment Program which is a federally funded employment and training program that provides academic, work readiness and occupational skills training to young adults. Dominic attended the Youth Empowerment Program from 2003-2005. By the time he completed that program, he had obtained full time employment and was working towards his GED. Julie Senneville, the Youth Empowerment Program's Coordinator, notes that while in the program, Dominic was polite, respectful and an eager student. (See letter from Julie Senneville at attachment 1).

Work History:

4. Dominic obtained his "green card" approximately 4-5 years ago. Since then, he has worked at McDonalds, H&R Block, North American Equipment Upfitters, Inc., Associates Grocery, Inc., and Lindt Chocolate Company. At the time of his

arrest, he had been working for about four months at Capital Auto Auction in Londonderry as a driver.

5. He held his job with North American Equipment Upfitters, Inc., as a welder, for over two years from 2004 – 2006. Michael Dunican, Dominic's supervisor at North American Equipment Upfitters, Inc., notes that Dominic was an excellent employee and was one of the company's best welders and that he "would be an asset to any company that chose to hire him." (See letter from Michael Dunican at attachment 2).

Programming at the House of Corrections:

6. Dominic has been incarcerated at the Hillsborough County House of Corrections since his arrest in this case on February 4, 2008. While incarcerated, he has taken advantage of various courses and programming available within the jail. Participation in all of these programs is voluntary. Dominic has participated in the Thresholds Program, a program that focuses on decision-making and positive thinking. (See description of Thresholds Program at attachment 3).
7. Dominic has also participated in the Money Management Program, Parenting Program, Writing and Communications Program as well as Alcoholics Anonymous and Narcotics Anonymous groups, GED preparation, English as a Second Language classes, a Children's Literacy Workshop and the Breaking the Chains of Addiction Program.
8. Dominic has earned certificates of participation in the Thresholds, Money Management, Parenting and Writing and Communications Programs (See Certificates at attachment 4). Dominic's participation in other programming is

documented in the attached list printed from the Program's Department at the Hillsborough County House of Corrections. (See print out at attachment 5).

Criminal Record:

9. Dominic's criminal record consists of one class A misdemeanor disorderly conduct conviction from 2006 from the Manchester District Court and one class A misdemeanor conviction for attempted violation of a protective order from 2004 from the Goffstown District Court. He received a suspended sentence and a fine for the disorderly conduct conviction. He served 29 days in jail on the conviction for violating a restraining order.

Immigration Consequences:

10. Under federal immigration law, Dominic's convictions on the indictments and informations at issue in this case may constitute convictions for "crimes of domestic violence" pursuant to 8 U.S.C. § 1227(a)(2)(E) and "crimes of moral turpitude" pursuant to 8 U.S.C. § 1227(a)(2)(A). Under federal immigration law, if he receives a sentence of a year or more on these convictions, these convictions may also constitute "aggravated felonies" pursuant to 8 U.S.C. § 1101(a)(43). Because of this, Dominic is likely to be put into immigration removal proceedings after he finishes serving any sentence on this case.

11. If Dominic is removed to Sudan, he will be returning to a country in conflict where he has few connections.

12. "Sudan has been at war with itself for more than three quarters of its existence. Since independence [in 1953], protracted conflict rooted in deep cultural and religious differences retarded Sudan's economic and political development and

forced massive internal displacement of its people.” U.S. Department of State, Bureau of African Affairs, July 2008, Background Note: Sudan, <http://www.state.gov/r/pa/ei/bgn/5424.htm>. “During more than 20 years of conflict ... violence, famine and disease killed more than 2 million people, forced an estimated 600,000 people to seek refuge in neighboring countries, and displaced approximately 4 million others within Sudan, creating the world’s largest population of internally displaced people.” *Id.*

13. In 2005, a Comprehensive Peace Agreement was signed that purported to end the more than two decades of civil war that took place between northern and southern Sudan. Briefing, A gleam among the ruins, *The Economist*, 33 (November 22, 2008). However, in May 2008, heavy fighting again broke out in Sudan. *Id.*
14. Furthermore, conflict continues in the west of Sudan in Darfur. U.S. Department of State, Sudan, Country Specific Information, http://www.state.gov/travel/cis_pa_tw/cis/cis_1029.html. Since 2003, Darfur has been considered “one of the world’s worst human rights and humanitarian catastrophes.” Amnesty International, Darfur History, <http://www.amnestyusa.org/>. The government of Sudan and the Janjawid, an allied militia, have been responsible for killings, torture, rape, detentions, forced displacement, the burning of homes and villages, and the theft and deliberate destruction of crops and cattle. *Id.* It is estimated that 300,000 men, women and children have died and 2.6 million people have been displaced from their homes as a result of this conflict. *Id.*

Recommendation for sentence:

15. When judges exercise their “heavy responsibility” to sentence criminal defendants, they do so with the goal of advancing “...the constitutional objectives of punishment, rehabilitation and deterrence...” State v. Burroughs, 113 N.H. 21, 23-24 (1973). “The true design of all punishment [is] to reform, not to exterminate mankind.” N.H. Constitution, Part 1, Article 18.

16. Because of Dominic’s minimal prior criminal record, the efforts he has taken to improve himself while incarcerated at the house of corrections since February of 2008, and the possibility that he could face removal/deportation to Sudan as a result of these convictions, the defense requests that this Court sentence Dominic to the following:

- a. 08-0862 and 08-0864: concurrent sentences of 304 days in the house of corrections, stand committed, with 304 days credit for time served since February 4, 2008.
- b. 08-0858 and 08-0859: concurrent sentences of 11 months in the house of corrections, all suspended for 5 years on the condition of good behavior and 3 years of probation with treatment as recommended by probation officer.

17. This sentence will advance the constitutional goals of sentencing. Dominic has already been punished by serving 304 days in the house of corrections since his arrest. He has begun the process of rehabilitation by participating in programming at the house of corrections, and this rehabilitation will continue through a term of probation. This sentence also serves to promote the sentencing goals of specific

and general deterrence. Specifically, Dominic will have lengthy prison exposure pursuant to State v. White, 131 N.H. 555 (N.H. 1989), if he violates probation.

The lengthy period of time he has already served in jail also sends a message to the community that convictions for offenses such as these result in a deprivation of liberty.

18. If the Court is not inclined to adopt this defense recommendation for sentence, the defense requests that the Court consider using consecutive sentences of no more than 11 months each so as to avoid sentences that will result in convictions for aggravated felonies under federal immigration law.

WHEREFORE, the defendant respectfully requests this Court:

- A. Formulate a sentence for Mr. Ali that is fair and just given all of the facts and circumstances of this case; and
- B. Grant the defendant such other and further relief as is just and equitable

Respectfully submitted,



Aileen O'Connell, #17144
Helen Sullivan, #18359
New Hampshire Public Defender
20 Merrimack Street
Manchester, NH 03101
(603) 669-7888

CERTIFICATE OF SERVICE

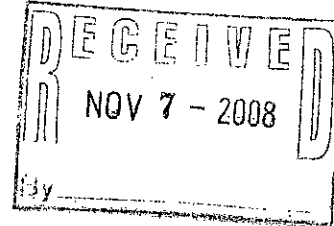
I hereby certify that a copy of the foregoing Defendant's Memorandum On the Issue of Sentencing has been forwarded this 2nd day of December, 2008 to Brett Harpster, Esquire, Hillsborough County Attorney's office.


Aileen O'Connell, #17144

ATTACHMENT 1

Youth Empowerment Program
Southern NH Services, Inc
49 Manchester Street
Manchester, NH 03101
(603) 626-7941

Hillsborough County Superior Court
300 Chestnut Street
Manchester, NH 03101



November 7, 2008

Your Honor:

My name is Julie Senneville and I am the program coordinator for the Youth Empowerment Program in Manchester, NH. The Youth Empowerment Program is a federally funded employment and training program that provides academic, work readiness and occupational skills training to young adults.

I had the pleasure of working with Dominic Ali from October 29, 2003 to June 29, 2005. When Dominic completed the training he was working full time and continuing to study for his GED test. I provided him monthly follow up services and he continued to be successful. Even after follow up services were over, he continued to maintain regular contact with staff.

During the time that I worked with Dominic, I found him to be polite and respectful. He was an eager student and really wanted to finish his schooling. He interacted well with his fellow classmates and worked well in group settings. He never was a behavior problem and never manifested negative behaviors in the classroom setting. He also received favorable reviews from his employer; there were never any complaints from his job site.

Respectfully submitted,

A handwritten signature in cursive script that reads "Julie Senneville".

Julie Senneville
Youth Development Specialist

ATTACHMENT 2

North American Equipment Upfitters, Inc



November 10, 2008.

To whom it may concern;

Dominic Ali was employed by North American Equipment Upfitters, Inc. from September 29, 2004 through October 13, 2006. It was our understanding that Dominic left our employment to pursue educational studies at the time of his resignation.

While in our employment Dominic was an excellent employee that worked well with others and had become one of our best welders. Dominic would be considered for a position in the future with North American and would be an asset to any company that chose to hire him.

Respectfully,

Michael Dunican
President

ATTACHMENT 3

THRESHOLDS / DECISIONS

ORIGIN / RATIONALE

Milton Burglass, a 24year old ex-offender, was in a jail in Louisiana. He realized that the volunteer programs were not reaching inmates, not providing him skills, not providing him with the skill he needed to face and deal with difficult situations in life. When he left jail, he went to college and got a PHD and even an MD.

In 1964 he began a program in the Pennsylvania correction system, which involved volunteers from the community teaching inmates decision-making skills. The program is known as THRESHOLDS. It spread throughout the northeast.

THRESHOLDS has been successful in the Hillsborough County Dept. of Corrections since 1994 and has reduced the recidivism of inmates from 65% to 15%.

AIM OF THRESHOLDS

- 1) To change the thought processes of the self-defeating individual so he can think clearly and decide knowingly, whatever his goal may be.
- 2) It is based on fact and logic and has NO moral, ethical or religious emphasis.

GOALS

THRESHOLDS helps an individual to:

- A. Accept himself as a unique person, to realize he is important and capable of succeeding in life.
- B. Accept the world for what it is, with all its problems and inequalities, because after all, it is the only one he has to live in.
- C. Solve or at least deal with his problems (rather than to ignore and avoid them). And gives him the skills to do so.

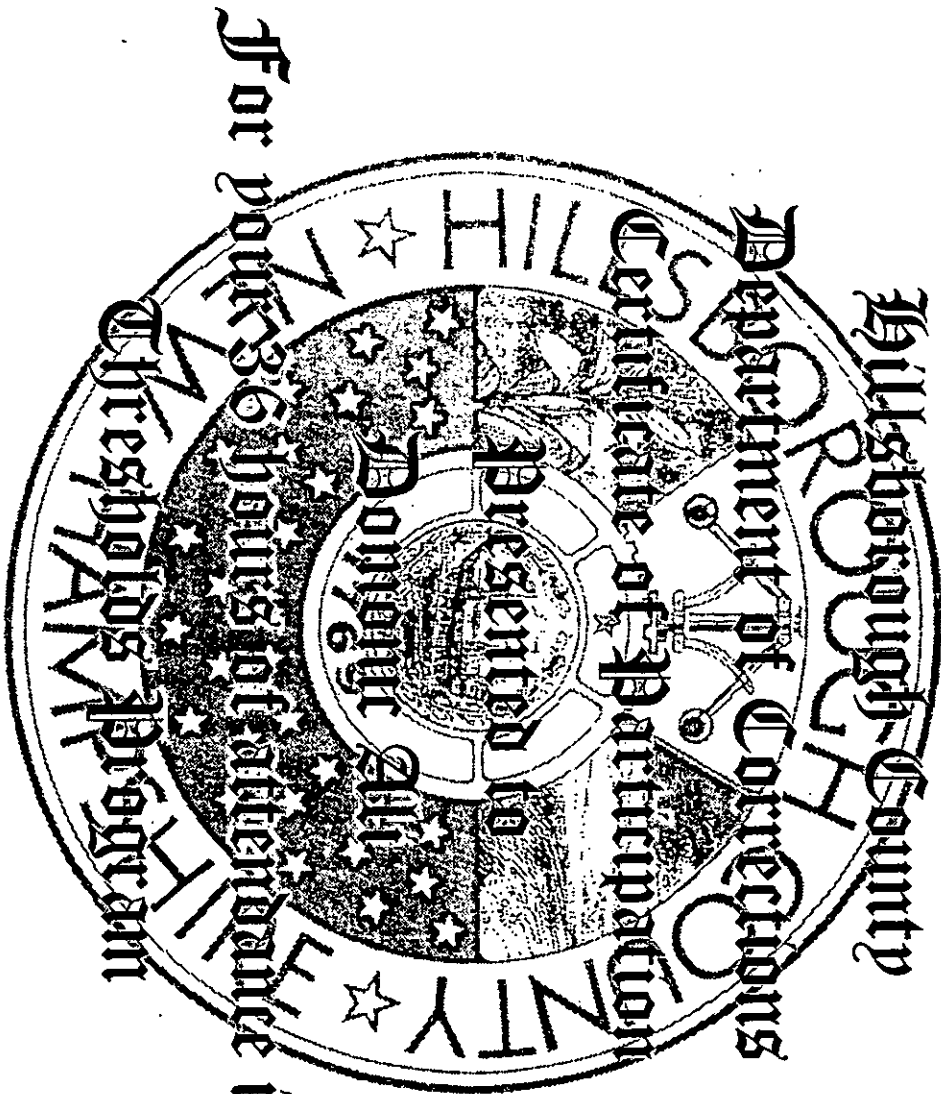
Example: The "street" youngster who is called a name by a policeman has a number of alternatives.

- 1) he may walk away
- 2) he may stand and laugh
- 3) he may insult the officer back
- 4) he may strike the officer in retaliation

All possible alternative have some consequences.

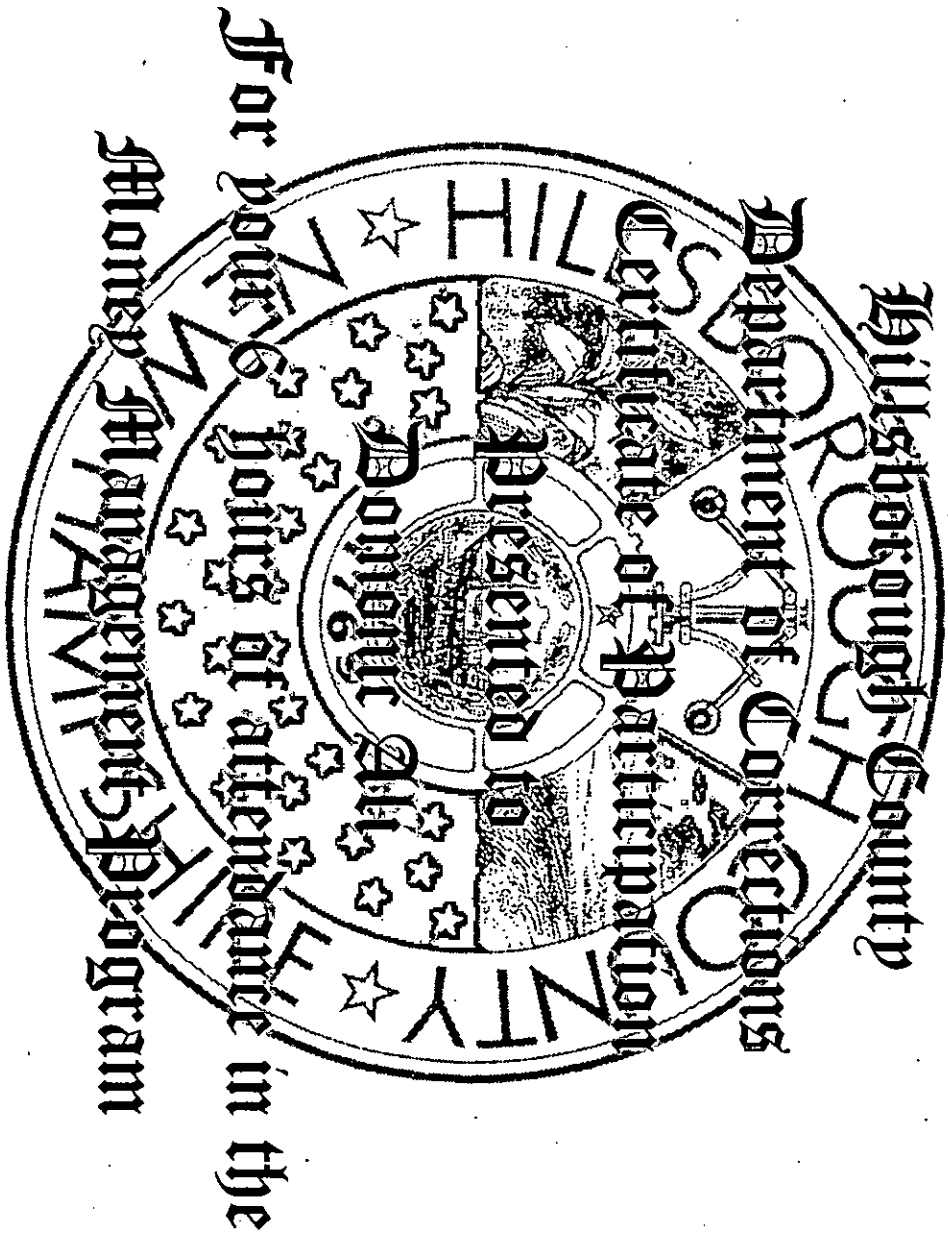
Once an inmate learns there may be a number of solutions to any problem, he is ready to set goals for himself. By trying to achieve these goals he practices decision-making and problem solving.

ATTACHMENT 4



James M. Jr.
James M. Jr., Superintendent

dated Margaret Howell 5-29-08
Sister Margaret Howell
Date



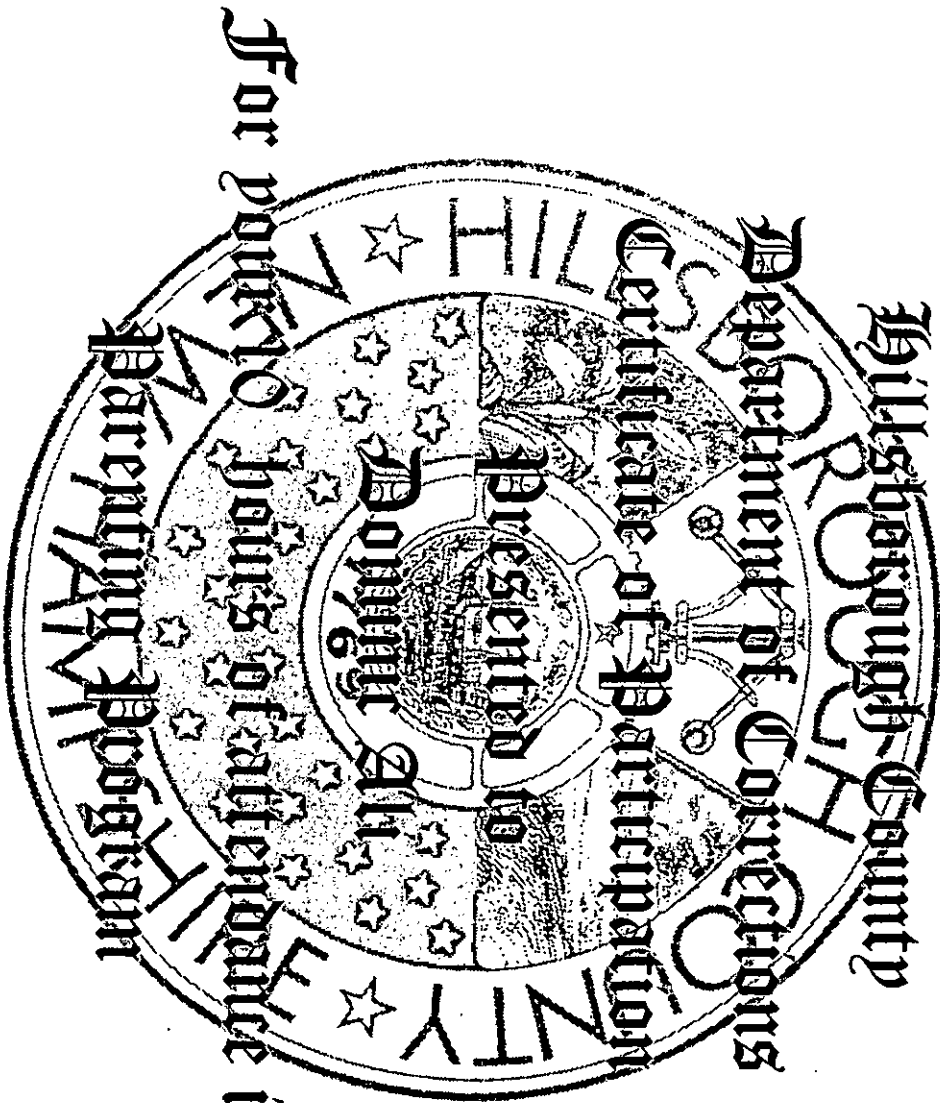
James H. Alcala Jr., Superintendent

Deputy Clerk

Date

James H. Alcala Jr.

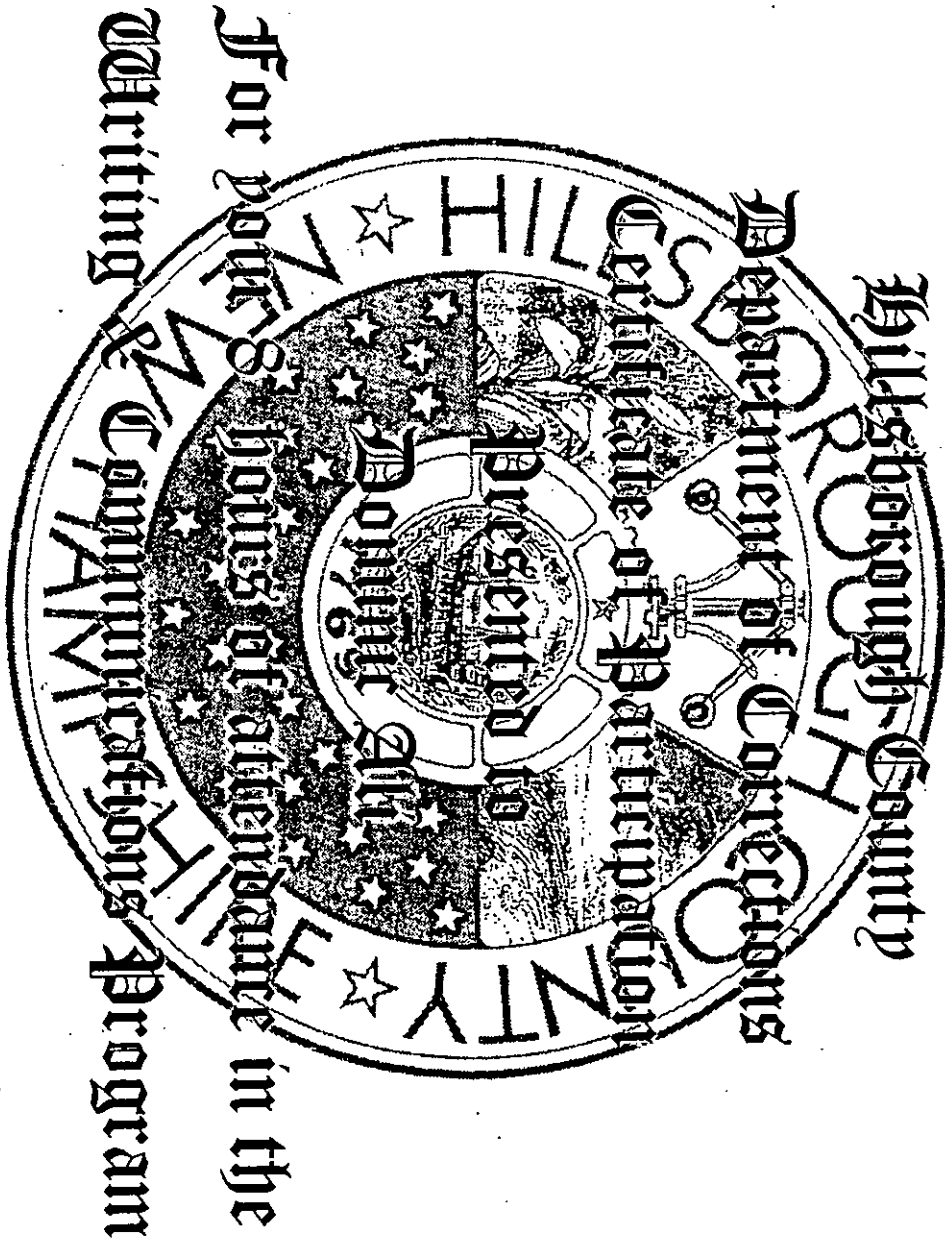
Deputy Clerk 4/3/2008



For 10 hours of attendance in the
Parenting Program

James H. O'Hara Jr., Superintendent

James O'Hara Jr.
Sharon Cullen 7-31-08
Date



James H. O'Hara Jr., Superintendent

Curt Stuchermolt

Date 8/22/08

ATTACHMENT 5

11/24/2008

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NO. 123

P02

Programs for: ALI, DOMONIC SILVANO

#	Program	Participation / Begin Dt	Term. Dt mm/dd/yyyy	Termination Code	Case Manager	Comment
1	N/A	02/12/2008	02/12/2008	1 (Successful Participation)	POMERLEAU	1900-2000 HRS
2	A/A	02/14/2008	02/14/2008	1 (Successful Participation)	PATRIQUIN	1844-1944 HRS
3	GED	03/06/2008	03/06/2008	1 (Successful Participation)	Davine	1100-1312 Hrs
4	Haircut	03/11/2008	03/11/2008	1 (Successful Participation)	SGT BARNES	
5	GED	03/11/2008	03/11/2008	1 (Successful Participation)	DAVINE	1055-1306 HRS
6	Thresholds	03/13/2008	03/13/2008	1 (Successful Participation)	ST.	1125-2045 PM
7	Thresholds	03/13/2008	03/13/2008	1 (Successful Participation)	FR. SIMONEAU	1328-1430 PM
8	Law Librar	03/13/2008	03/13/2008	1 (Successful Participation)	DAVINE	1055-1300 PM
9	Haircut	03/15/2008	03/15/2008	1 (Successful Participation)	SGT BARNES	
10	Thresholds	03/20/2008	03/20/2008	3 (Did not Complete)	SIMONEAU	ATTENDED
11	Making Man	03/20/2008	03/20/2008	1 (Successful Participation)	COWEN	1230-1430 HRS
12	GED	03/20/2008	03/20/2008	3 (Did not Complete)	DAVINE	NOT ON UNIT
13	Thresholds	03/20/2008	03/20/2008	1 (Successful Participation)	MARGUERITE	1830-2025 HRS
14	GED	03/18/2008	03/18/2008	1 (Successful Participation)	DAVINE	1055-1302 HRS
15	Thresholds	03/25/2008	03/25/2008	1 (Successful Participation)	SIMONEAU	1725-1835 HRS
16	GED	03/25/2008	03/25/2008	1 (Successful Participation)	DAVINE	1055-1310 HRS
17	GED	03/27/2008	03/27/2008	1 (Successful Participation)	DAVINE	1055-1305 HRS
18	Thresholds	03/27/2008	03/27/2008	1 (Successful Participation)	GRAVEL	1836-2041 HRS
19	Making Man	03/27/2008	03/27/2008	1 (Successful Participation)	COWEN	1230-1445 HRS
20	GED	04/01/2008	04/01/2008	1 (Successful Participation)	DAVINE	1055-1309 HRS
21	Thresholds	04/01/2008	04/01/2008	1 (Successful Participation)	SIMONEAU	1728-1845 HRS
22	Thresholds	04/03/2008	04/03/2008	1 (Successful Participation)	GRAVEL	1830-2045 HRS
23	Making Man	04/03/2008	04/03/2008	1 (Successful Participation)	Cowen	1230-1435 Hrs
24	GED	04/03/2008	04/03/2008	1 (Successful Participation)	Davine	1055-1317 Hrs
25	Religious	04/07/2008	04/07/2008	1 (Successful Participation)	ADAMS	1825-1925 HRS
26	GED	04/08/2008	04/08/2008	1 (Successful Participation)	DAVINE	1043-1300 HRS
27	Thresholds	04/10/2008	04/10/2008	1 (Successful Participation)	GRAVEL	1828-2039 HRS
28	GED	04/10/2008	04/10/2008	3 (Did not Complete)	DAVINE	1055-1320 HRS
29	GED	04/15/2008	04/15/2008	1 (Successful Participation)	DAVINE	1050-1301 HRS
30	Thresholds	04/15/2008	04/15/2008	1 (Successful Participation)	SIMONEAU	1748-1844 HRS
31	Thresholds	04/17/2008	04/17/2008	1 (Successful Participation)	GRAVEL	1818-2044 HRS
32	GED	04/17/2008	04/17/2008	1 (Successful Participation)	DAVINE	1100-1300 HRS
33	GED	04/22/2008	04/22/2008	1 (Successful Participation)	DAVINE	1100-1300 HRS
34	Thresholds	04/22/2008	04/22/2008	1 (Successful Participation)	SIMONEAU	1724-1834 HRS
35	GED	04/24/2008	04/24/2008	1 (Successful Participation)	DAVINE	1145-1300 HRS

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Programs for: ALI, DOMONIC SILVANO

36	Thresholds	04/24/2008	04/24/2008	1 (Successful Participation)	GRAVE	1822-2035 HRS	36
37	Thresholds	04/29/2008	04/29/2008	1 (Successful Participation)	SIMONEAU	1740-1900 HRS	37
38	Parenting	04/29/2008	04/29/2008	1 (Successful Participation)	MARGUERITE	0930-1025 HRS	38
39	GED	04/29/2008	04/29/2008	1 (Successful Participation)	DAVINE	1100-1310 HRS	39
40	ABE/ESL	05/01/2008	05/01/2008	1 (Successful Participation)	DAVINE	1100-1300 HRS	40
41	Thresholds	05/01/2008	05/01/2008	1 (Successful Participation)	GRAVEL	1820-2032 HRS	41
42	ABE/ESL	05/06/2008	05/06/2008	1 (Successful Participation)	DAVINE	1056-1308 HRS	42
43	ABE/ESL	05/08/2008	05/08/2008	1 (Successful Participation)	DAVINE	1100-1311 HRS	43
44	Thresholds	05/08/2008	05/08/2008	1 (Successful Participation)	DAVINE	1832-2045 HRS	44
45	ABE/ESL	05/13/2008	05/13/2008	1 (Successful Participation)	DAVINE	1055-1300 HRS	45
46	N/A	05/13/2008	05/13/2008	1 (Successful Participation)	DAVINE	1917-2030 HRS	46
47	ABE/ESL	05/15/2008	05/15/2008	1 (Successful Participation)	DAVINE	1104-1248 HRS	47
48	Thresholds	05/15/2008	05/15/2008	1 (Successful Participation)	GRAVEL	1828-2028 HRS	48
49	Thresholds	05/17/2008	05/17/2008	1 (Successful Participation)	MONGKIEUR	1308-1413 HRS	49
50	GED	05/20/2008	05/20/2008	1 (Successful Participation)	DAVINE	1042-1320 HRS	50
51	N/A	05/21/2008	05/21/2008	1 (Successful Participation)	JOHNSON	1900-2010 HRS	51
52	Thresholds	05/22/2008	05/22/2008	1 (Successful Participation)	GRAVEL	1826-2149 HRS	52
53	ABE/ESL	05/22/2008	05/22/2008	1 (Successful Participation)	DAVINE	1100-1315 HRS	53
54	Thresholds	05/24/2008	05/24/2008	1 (Successful Participation)	MONGKIEUR	1300-1422 HRS	54
55	ABE/ESL	05/27/2008	05/27/2008	1 (Successful Participation)	DAVINE	1105-1320 HRS	55
56	Thresholds	05/29/2008	05/29/2008	1 (Successful Participation)	GRAVEL	1820-2025 HRS	56
57	ABE/ESL	05/29/2008	05/29/2008	1 (Successful Participation)	DAVINE	1050-1255 HRS	57
58	ABE/ESL	06/30/2008	06/30/2008	1 (Successful Participation)	DAVINE	1100-1300 HRS	58
59	ABE/ESL	07/02/2008	07/02/2008	1 (Successful Participation)	GRAVEL	0815-1020 HRS	59
60	Parenting	07/03/2008	07/03/2008	1 (Successful Participation)	COWEN	1104-1300 HRS	60
61	Thresholds	07/03/2008	07/03/2008	1 (Successful Participation)	SIMONEAU	1315-1425 HRS	61
62	ABE/ESL	07/07/2008	07/07/2008	3 (Did not Complete)	DAVINE	REFUSED	62
63	ABE/ESL	07/09/2008	07/09/2008	1 (Successful Participation)	DAVINE	0811-1015 HRS	63
64	Parenting	07/10/2008	07/10/2008	1 (Successful Participation)	COWEN	1055-1301 HRS	64
65	Thresholds	07/11/2008	07/11/2008	1 (Successful Participation)	SIMONEAU	1315-1400 HRS	65
66	ABE/ESL	07/14/2008	07/14/2008	1 (Successful Participation)	DAVINE	1056-1305 HRS	66
67	ABE/ESL	07/16/2008	07/16/2008	1 (Successful Participation)	DAVINE	0815-1025 HRS	67
68	Parenting	07/17/2008	07/17/2008	1 (Successful Participation)	COWEN	1055-1256 HRS	68
69	Comm and W	07/18/2008	07/18/2008	1 (Successful Participation)	MODERMOTT	0817-1035 HRS	69
70	ABE/ESL	07/21/2008	07/21/2008	3 (Did not Complete)	DAVINE	REFUSED	70
71	ABE/ESL	07/23/2008	07/23/2008	3 (Did not Complete)	DAVINE	REFUSED	71
72	Parenting	07/24/2008	07/24/2008	1 (Successful Participation)	COWEN	1110-1315 HRS	72

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Programs for: ALI, DOMONIC SILVANO

73	Comm and W	07/25/2008	07/25/2008	1 (Successful Participation)	MCDERMOTT	0830-1030 HRS
74	ABE/ESL	07/28/2008	07/28/2008	1 (Successful Participation)	DAVINE	1055-1255 HRS
75	C.L.W.	07/28/2008	07/28/2008	1 (Successful Participation)	GRAVEL	1245-1345 HRS
76	ABE/ESL	07/30/2008	07/30/2008	1 (Successful Participation)	DAVINE	0810-1020 HRS
77	Parenting	07/31/2008	07/31/2008	1 (Successful Participation)	COWEN	1058-1330 HRS
78	Parenting	08/04/2008	08/04/2008	1 (Successful Participation)	COWEN	1130-1305
79	Comm and W	08/08/2008	08/08/2008	1 (Successful Participation)	MCDERMOTT	0835-1032 HRS
80	Parenting	08/11/2008	08/11/2008	3 (Did not Complete)	COWEN	REFUSED
81	Storybook	08/19/2008	08/19/2008	1 (Successful Participation)	DRQUIN	1100-1210 HRS
82	Comm and W	08/22/2008	08/22/2008	1 (Successful Participation)	MCDERMOTT	0829-1031 HRS
83	GEO	09/15/2008	09/15/2008	3 (Did not Complete)	DAVINE	BOOKING
84	Haircut	09/23/2008	09/23/2008	1 (Successful Participation)	BROOKS	
85	GEO	10/01/2008	10/01/2008	1 (Successful Participation)	DAVINE	1055-1305 HRS
86	ABE/ESL	10/06/2008	10/06/2008	3 (Did not Complete)	DAVINE	REFUSED
87	ABE/ESL	10/08/2008	10/08/2008	1 (Successful Participation)	DAVINE	1058-1305 HRS
88	C.O.A	10/08/2008	10/08/2008	1 (Successful Participation)	MURRAY	1920-2035 HRS
89	ABE/ESL	10/15/2008	10/15/2008	1 (Successful Participation)	DAVINE	1058-1310 HRS
90	ABE/ESL	10/20/2008	10/20/2008	1 (Successful Participation)	DAVINE	0812-1034 HRS
91	ABE/ESL	10/22/2008	10/22/2008	1 (Successful Participation)	DAVINE	1058-1310 HRS
92	ABE/ESL	10/27/2008	10/27/2008	1 (Successful Participation)	DAVINE	0815-1026 HRS
93	ABE/ESL	10/29/2008	10/29/2008	1 (Successful Participation)	DAVINE	1100-1300 HRS
94	ABE/ESL	11/03/2008	11/03/2008	1 (Successful Participation)	DAVINE	0814-1020 HRS
95	ABE/ESL	11/05/2008	11/05/2008	1 (Successful Participation)	DAVINE	1100-1305 HRS
96	ABE/ESL	11/10/2008	11/10/2008	1 (Successful Participation)	DAVINE	0815-1022 HRS
97	Gymnasium	11/11/2008	11/11/2008	1 (Successful Participation)	RICHARD	1313-1425 HRS
98	Haircut	11/13/2008	11/13/2008	1 (Successful Participation)	POTTER	